

**ADORNO & YOSS**

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JAN DOUGLAS ATLAS

EMAIL: JDA@ADORNO.COM

January 5, 2010

**VIA CERTIFIED MAIL AND FACSIMILE**

Mr. Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
Attn: Claims Department  
45 Rockefeller Plaza  
New York, NY 10111

**Re: Bankruptcy Case No. 08-1789 (BLR) / Opposition to Trustee's Denial  
of Claim Filed by Barbara Scherr / Claim No. 3594**

Dear Mr. Picard:

This letter is in opposition to the Notice of Trustee's Determination of Claim dated December 8, 2009, denying the claim of Ms. Barbara Scherr ("Claimant") pursuant to the Securities Investor Protection Act, 15 U.S.C. 78aaa, *et seq.* ("SIPA").

SIPA "is remedial legislation. As such it should be construed liberally to effect its purpose." *In re First State Securities Corp.*, 34 B.R. 492, 496 (Fla. 1983) (quoting *Tcherepnin v. Knight*, 389 U.S. 332 (1967)). "The purpose is the protection of the insolvent brokers' customers." *Id.* at 496. In *Securities and Exchange Commission v. F. O. Baroff Co., Inc.*, 497 F.2d 280 (2d Cir. 1974) [hereinafter, "*F. O. Baroff Co.*"], the Second Circuit gave a detailed analysis of SIPA's legislative history and intent. *Id.* at 281. Specifically, the court stated that:

[t]he object of that statute, and the function of the Securities Investor Protection Corporation (SIPC) it created, is to protect the public customers of securities dealers from suffering the consequences of financial instability in the brokerage industry...Once a broker or dealer is found to be on the brink of collapse or in danger of failing to meet its obligations to its customers, a trustee is appointed for liquidation of the business. The firm's [sic] clients are cushioned (within limits) from personal loss through a special fund collected by SIPC from all securities dealers registered under the 1934 Securities Exchange Act...But the Securities Investor Protection Act allows only those who meet its definition of a 'customer' to share in this assurance.

{KCARDOSO/216613.0001/N0804168\_1}

CALIFORNIA FLORIDA GEORGIA MASSACHUSETTS MISSOURI NEW JERSEY NEW YORK TEXAS WASHINGTON, D.C.  
ATTORNEYS ADMITTED SOLELY IN THE JURISDICTION WHERE LISTED OFFICE IS LOCATED, UNLESS OTHERWISE NOTED

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*F. O. Baroff Co.*, 497 F.2d at 281. Citing the House of Representatives, the court went on to state that “[t]he primary purpose of [SIPA] is to provide protection for investors if the broker-dealer with whom they are doing business encounters financial troubles.” *Id.* at 283. In furtherance of SIPA, SIPC, “an independent corporation established by Congress,” was created, “to reestablish[] confidence in the securities markets” by “protect[ing] investors from the effects of chronic instability in the securities industry.” *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.*, 411 F. Supp. 411, 412-13 (D.C. Mass. 1976). SIPC’s “prime responsibility [is] to establish...a substantial reserve fund which...provide[s] protection to investors in the event a brokerage firm collapse[s].” *Id.* at 413.

SIPA defines the term “customer” of a debtor as:

**any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer. The term “customer” includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities...**

15 U.S.C.A. § 7811(2) (emphasis added).

The United States District Court for the Southern District of New York further discussed the definition of the term “customer” in *Securities and Exchange Commission v. Kenneth Bove & Co., Inc.*, 378 F. Supp. 697 (S.D.N.Y. 1974) [hereinafter “*Kenneth Bove & Co.*”]. The court found that in order to be considered a “customer” under SIPA, “the claimant must have entrusted his securities to the debtor in liquidation,” and have been “on account of securities received, acquired, or held by the debtor.” *Id.* at 699. Claims pursuant to SIPA are “grounded on possession of identifiable securities by the broker.” *Id.* Under SIPA, **“the preferential protection is accorded to a person who can trace and identify the...funds in the hands of the stockbroker.”** *Id.* (emphasis added).

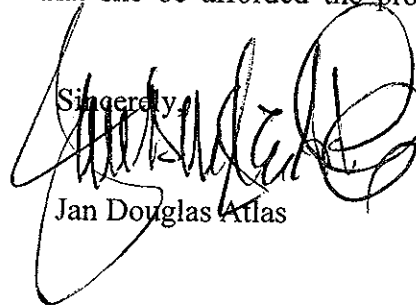
In this case, Claimant’s funds are traceable and can be identified as being in the direct control of Bernard L. Madoff Investment Securities LLC. Claimant transferred and placed the amount of \$500,000.00 (the “Investment”) with Emerald Asset Advisors, LLC which purchased with the Investment a limited partnership interest in the Rye Select Broad Market Fund, LP (“Rye Fund”) under the authority of the Rye Fund’s General Partner, Tremont Partners, Inc. (“Tremont Partners”), a subsidiary of Tremont Group Holdings, Inc. Attached hereto are copies of supporting documents evidencing the Investment in the limited partnership interest (the “Securities”). Tremont Partners placed all of the assets of the Rye Fund with Bernard L. Madoff Investment Securities LLC. The final account statement, attached hereto, reflects Securities

Mr. Irving H. Picard

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owed to Claimant in the amount of \$531,482.77. Claimant is clearly a "customer" under SIPA and should be afforded its protection. The fact that Claimant's funds were not given directly from Claimant to Bernard L. Madoff Investment Securities LLC is of no consequence. As an investor, Claimant should be protected from the effects of the instable securities industry and, more specifically, the collapse of Bernard L. Madoff Investment Securities LLC, in which Claimant's assets were invested through her agents, Emerald Asset Advisors, LLC, The Rye Fund, and Tremont Partners. To deny Claimant's claim would directly contravene the legislative intent of SIPA. Accordingly, Claimant respectfully requests that the denial of her claim be reversed; that her claim be granted; and that she be afforded the protection to which she is entitled pursuant to SIPA.

Sincerely,  
  
Jan Douglas Atlas

JDA/cab

Enclosure

cc: United States Bankruptcy Court  
for the Southern District of New York (by mail only)

Ms. Barbara Scherr



COPY

BNY ALTERNATIVE INVESTMENT  
SERVICES, INC.  
101 Barclay Street  
20th Floor West  
New York, New York 10286  
USA

Ms. Pamela Palmer  
Emerald Asset Advisors, LLC  
2843 Executive Park Drive  
Fort Lauderdale, FL 33327  
USA

## CLIENT STATEMENT

A/C Number: 00-1200-800002849  
Period Beginning: 01-Nov-2008  
Period Ending: 30-Nov-2008  
Fax Number:  
E-Mail: [ppalmer@emeraldasset.com](mailto:ppalmer@emeraldasset.com)

This statement is being provided to you at the request of Barbara Scherr

PERFORMANCE SUMMARY		
Security	% Change	
	Period to Date	Year to Date
Rye Select Broad Market Fund, LP	1.72%	6.30%

PERIOD ACTIVITY					
Security	Net Opening Capital	Contribution	Net Income / (Loss)	Withdrawals / Trans / ReReg	Net Closing Capital
Rye Select Broad Market Fund, LP	522,483.65	0.00	8,999.12	0.00	531,482.77
Totals	522,483.65	0.00	8,999.12	0.00	531,482.77

DISCLOSURE NOTES
<ul style="list-style-type: none"> <li>• % Change results are Net of all fees.</li> <li>• Year To Date change is based on Calendar Year which ends on December 31st.</li> <li>• All values are in USD.</li> <li>• This information is not intended to be used for tax reporting or planning.</li> <li>• This information is unaudited. Audited statements are issued upon conclusion of the fiscal year end audit.</li> <li>• The Fund's net asset value has been calculated on the basis of market value information with respect to the Fund's portfolio obtained from third parties, including independent pricing vendors, the Fund's manager and administrators of funds in which the Fund may have invested. BNY-AIS does not give any assurances with respect to the accuracy of such market value information.</li> <li>• Past performance as described herein is not necessarily indicative of future results.</li> <li>• The Bank of New York acts as custodian with respect to cash. With respect to the portfolio's investments, such investments have been and will continue to be custodied for the benefit of the portfolio at Bernard L. Madoff Investment Securities LLC, 885 Third Avenue, New York, NY, 10022.</li> <li>• Additional information is available at <a href="http://www.ryeselectfunds.com">www.ryeselectfunds.com</a>.</li> </ul>

INVESTOR INQUIRIES
<p>Telephone: 212.815.4090      Facsimile: 212.644.6669      Email: <a href="mailto:AISOnline_NY@bankofny.com">AISOnline_NY@bankofny.com</a>      Web: <a href="http://www.fundadmin.com">www.fundadmin.com</a></p>



BNY ALTERNATIVE INVESTMENT  
SERVICES, INC.  
101 Barclay Street, 20th Floor West  
New York, New York 10286  
USA

Fax: 954-385-9624

E-mail: [abudelman@emeraldasset.com](mailto:abudelman@emeraldasset.com)

21-Apr-2008

**Allan Budelman**  
2843 Executive Park Drive  
Weston, FL 33331  
USA

### TRADE CONFIRMATION

Dear Investor,

We are pleased to confirm your investment into Rye Select Broad Market Fund, LP. The details below confirm the specifics of the transaction executed on your behalf.

Please take a moment to review this confirmation to ensure that all details pertaining to this transaction and your account are correct. If any discrepancies are identified please contact our Investor Services Group as described below.

### ACTIVITY CONFIRMED

Security		Rye Select Broad Market Fund, LP	
Details		Contributions	
Action	Buy	Gross Contribution	500,000.00
Dealing Date	1-Apr-2008	Sales Charge/Interest Payment	0.00
Base Currency	USD	Net Contribution	500,000.00
Lot Ref. Number			

### ACCOUNT INFORMATION

Acct. Name Barbara Scherr

Acct. Number 01-2008-00002849

Telephone --

Facsimile --

Email [scherrb@bellsouth.net](mailto:scherrb@bellsouth.net)

### INVESTOR INQUIRIES

Telephone 212.815.4090

Facsimile 212.644.6669

Email [AISOnline\\_NY@bankofny.com](mailto:AISOnline_NY@bankofny.com)

Web [www.fundadmin.com](http://www.fundadmin.com)

**RYE**

Investment Management

A Division of Tremont Group Holdings, L.L.C.

BNY ALTERNATIVE INVESTMENT  
SERVICES, INC.  
101 Barclay Street, 20th Floor West  
New York, New York 10286  
USA

Fax: 954-385-9624

E-mail: [abudelman@emeraldasset.com](mailto:abudelman@emeraldasset.com)

02-Apr-2008

Allan Budelman  
2843 Executive Park Drive  
Weston, FL 33331  
USA

### CONFIRMATION OF CASH RECEIPT

Dear Investor,

We are pleased to confirm the receipt of your proceeds on behalf of Rye Select Broad Market Fund, LP. The details below confirm the specifics of the transaction. Your proceeds will not be invested until all requisite documentation has been received in good order and your eligibility as an investor in Rye Select Broad Market Fund, LP has been confirmed.

Please take a moment to review this confirmation to ensure that all details pertaining to this transaction and your account are correct. If any discrepancies are identified please contact our Investor Services Group as described below.

### ACTIVITY CONFIRMED

#### Details

Action	Cash Received
Date Received	18-Mar-2008
Amount Local	500,000.00 USD
Amount Base	500,000.00 USD

#### To Be Applied

Dealing Date	01-Apr-2008
Security	Rye Select Broad Market Fund, LP

### ACCOUNT INFORMATION

Acct. Name	Barbara Scherr
Acct. Number	01-2008-00002849
Telephone	--
Facsimile	--
Email	<a href="mailto:scherrb@bellsouth.net">scherrb@bellsouth.net</a>

### INVESTOR INQUIRIES

Telephone	212.815.4090
Facsimile	<a href="tel:212.644.6669">212.644.6669</a>
Email	<a href="mailto:AISOnline_NY@bankofny.com">AISOnline_NY@bankofny.com</a>
Web	<a href="http://www.fundadmin.com">www.fundadmin.com</a>

*Charles* SCHWAB  
INSTITUTIONAL

*Waive Wire Fee*

## Wire Transfer Letter of Authorization

Page 1 of 2

**Investment Advisor ("IA") Information (This portion to be completed by IA.)**

IA Firm Name (please print): **EMERALD ASSET ADVISORS LLC**

IA Master Account Number: **8962470**

Service Team: **IST 2**

- The wire transfer fee is \$25. For foreign wires, contact your Investment Advisor for specific information required.
- Note: Distribution forms are required for retirement accounts. Call your Investment Advisor for the correct form.

**1. One-Time or Standing Instructions (Select A or B.)**

A. ☒ One-time

B. ☐ Standing Instructions Authorization (optional)

Please initial below only if you want your IA to initiate wire transfers to accounts of unlike registration.

You may revoke this authorization by notifying Schwab. (An X is not sufficient.)

Standing Instructions. I authorize Schwab to transfer funds from this account to the receiving bank name on this form at the direction of my IA. I have previously granted my IA disbursement authority (LPFA or WPFA) on this Schwab account. I hereby acknowledge that this authority is effective regardless of any differences in registration between these two accounts.

**2. Schwab Account Information**

**Barbara Scherr**

Account Holder Name(s) (as they appear on your statement)

**5133-0352**

Schwab Account Number

**3. Receiving Bank Information (For examples, see Section 5.)**

**\$500,000.00**

Amount to Be Wired (In U.S. Dollars)  
**Bank of New York**

Amount to Be Wired (In Foreign Currency)

Foreign Currency Type

Receiving Bank Name  
**021000018**

Receiving Bank Phone Number

Receiving Bank Routing Number (ABA, IBAN or SWIFT code)  
**8900631473**

Receiving Bank Address (required for foreign bank)

Account Number at Receiving Bank  
**Rye Select Broad Market Fund, LP (Intended Investor: Barbara Scherr)**

Name(s) on Receiving Bank Account (registration)  
**555 Theodore Fremd Avenue Suite C-300 Rye, NY 10580**

Address of Account Holder at Receiving Bank if Different from Schwab Account Registration (example: Brokerage Firm/Escrow Company)

Further Credit/Escrow Account Number (if applicable)

Escrow Company Phone Number

Name of Final Beneficiary (if applicable)

Address of Final Beneficiary (required if final beneficiary is different from Schwab account registration)

**4. Please Read and Sign (Signatures required.)**

Please note: I understand that wiring funds outside of the U.S. may take three to five business days.

I authorize Charles Schwab & Co., Inc. ("Schwab") to wire funds from my Schwab account pursuant to the above instructions. I agree to indemnify and hold harmless Schwab, its affiliates and their directors, officers, employees and agents from and against all claims, actions, costs and liabilities, including attorneys' fees, arising out of or relating to: (1) their reliance on this Letter of Authorization, and (2) Schwab's execution of IA's instructions.

Please note: If this is a Custodial account, I acknowledge and agree that any funds or securities transferred out of the account, and into the account of the custodian or other account, shall be used or applied solely for the benefit of the minor.

For standing instructions only: I understand that Schwab may accept future requests to wire funds from my account according to the above instructions. Such requests may be made by any person having signing authority with respect to my Schwab account and may be delivered orally, in person or by telephone, or may be transmitted by facsimile or delivered in a signed writing.

*X Barbara Scherr*  
Signature: Account Holder/Trustee/Custodian/Executor

*Barbara Scherr*  
Print Name

Date **3/12/08**  
(mm/dd/yyyy)

Signature: Additional Account Holder/Co-Trustee/Co-Custodian/Co-Executor

Print Name

Date  
(mm/dd/yyyy)

Signature: Investment Advisor (if applicable)

Print Name

Date  
(mm/dd/yyyy)

Note: Investment Advisor may sign only if the account holder has granted disbursement authority AND there is a final beneficiary account number whose registration is IDENTICAL to the Schwab account registration. Investment Advisor may also sign for real estate escrow wires if the account holder is the beneficial owner of the wired funds and has granted disbursement authority.

WB

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**Charles SCHWAB**  
INSTITUTIONAL

Schwab One® Account of  
BARBARA SCHERR

Account Number  
5133-0352

Statement Period  
March 1-31, 2008

### Transaction Detail - Purchases & Sales

#### Fixed Income Activity

Settle Date	Trade Date	Transaction	Description	Par	Unit Price	Total Amount
03/14/08	03/11/08	Sold	MC KINNEY TEX 4%09 GO LTX DUE 08/15/09 With accrued interest of \$161.11	(50,000.0000)	101.1260	50,724.11
03/14/08	03/11/08	Sold	PLAQUEMINES PARIS 4.4%09 GO LTX DUE 03/01/09 With accrued interest of \$158.89	(100,000.0000)	100.8000	100,958.89
03/14/08	03/11/08	Sold	WILL CNTY ILL SC 4.25%09 GO U/LTX DUE 03/01/09 With accrued interest of \$153.47	(100,000.0000)	101.0350	101,188.47

**Total Fixed Income Activity**

252,871.47

**Total Purchases & Sales**

252,871.47

### Transaction Detail - Deposits & Withdrawals

Transaction Process Date	Activity	Description	Location	Credit/(Debit)
03/18/08	Funds Paid	WIRED FUNDS DISBURSED		(500,000.00)
03/31/08	MoneyLink Txn	Tfr BANK OF AMERICA, N. BARBARA A SCHERR		(13,500.00)
<b>Total Deposits &amp; Withdrawals</b>				(513,500.00)

### Transaction Detail - Dividends & Interest (including Money Market Fund dividends reinvested)

Transaction Process Date	Activity	Description	Credit/(Debit)
03/01/08	Bond Interest	GARLAND TEX ELEC 3.5%09	875.00
03/01/08	Bond Interest	HONOLULU HAWAII CIT 5%09	2,500.00
03/01/08	Bond Interest	PLAQUEMINES PARIS 4.4%09	2,200.00

Schwab has provided accurate gain and loss information wherever possible for most investments. Cost basis data may be incomplete or unavailable for some of your holdings. Please see "Endnotes for Your Account" section for an explanation of the endnote codes and symbols on this statement.

CT2H1201-002834 45851

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SIPC